

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Brenntag Pacific Incorporated  
1888 Nirvana Avenue  
Chula Vista, California 91911  
EPA ID No. CAT 080011802

Respondent

Docket No. HWCA 2004-0614A

CONSENT ORDER

Health and Safety Code  
Section 25187

The State Department of Toxic Substances Control (Department) and Brenntag Pacific Incorporated (Respondent) enter into this Consent Order and agree as follows:

1. The Respondent is a distributor of chemical products in Mexico and the United States, and transports empty drums that are returned to the company for proper reconditioning and reuse
2. The Department conducted an inspection of a shipment of drums by the Respondent at the United States Customs Otay Mesa Port of Entry located on 9495 Customhouse Plaza, San Diego, California.
3. The Department alleges the following violations:
  - 3.1. The Respondent is the Importer of Record for hazardous waste generated in Mexico. The hazardous waste was imported into the U.S. at the Otay Mesa Port of Entry.

3.2. The Respondent violated California Code of Regulations, title 22, section 66261.7 (r) in that on or about August 4, 2004, Respondent failed to properly manage six (6) 55-gallon metal drums that contained pourable quantities of flammable material. The drums were being managed as “empty” but contained pourable quantities of flammable liquid, and should have been managed as a hazardous waste in accordance with the applicable provisions of the Hazardous Waste Control Laws and the implementing regulations.

4. The parties wish to avoid the expense of litigation and to ensure prompt compliance.

5. Jurisdiction exists pursuant to Health and Safety Code section 25187.

6. Respondent waives any right to a hearing in this matter.

7. This Consent Order shall constitute full settlement of the violations alleged above, but does not limit the Department from taking appropriate enforcement action concerning other violations.

8. Respondent does not admit the violations alleged above.

#### SCHEDULE FOR COMPLIANCE

9. Respondent shall comply with the following:

9.1. Respondent has corrected the violations cited above.

Respondent shall operate hereafter in a manner that shall prevent recurrences of the violations cited herein.

9.2. Respondent shall manage, store, and dispose of hazardous waste in accordance with the Hazardous Waste Control Law (Health and Safety Code section 25100 et seq. and title 22, California Code of Regulations, division 4.5).

10. Submittals: All submittals from Respondent pursuant to this Consent Order shall be sent simultaneously:

To:

Yvonne Sanchez,  
Branch Chief  
Southern California Branch  
Statewide Compliance Division  
Department of Toxic Substances Control  
5796 Corporate Avenue  
Cypress, California 90630

To:

Juan Jimenez, Chief  
Border Unit  
Southern California Branch  
Statewide Compliance Division  
Department of Toxic Substances Control  
9174 Sky Park Court, Suite 150  
San Diego, California 92123

To:

Ramon B. Perez  
Senior Staff Counsel  
9174 Sky Park Court, Suite 150  
San Diego, California 92123

10.1. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent

shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

10.2. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

10.3. Liability: Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

10.4. Site Access: Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of respondent in carrying out the terms of this Consent Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order. Respondent shall permit such persons to take samples of any

hazardous waste, suspected hazardous, or of materials suspected of producing hazardous waste. Any authority granted by this sub-section which is not otherwise granted by law shall expire after five years from the effective date of this order.

10.5. Sampling, Data, and Document Availability: Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Consent Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Consent Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Consent Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Consent Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to seeking to destroy any such documents within the minimum six-year period of retention.

10.6. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 12.3, in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to

any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order.

10.7. Incorporation of Plans and Reports: All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Consent Order are incorporated in this Consent Order upon approval by the Department.

10.8. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

10.9. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

### PAYMENTS

11. Respondent shall pay a total of \$17,500.00. Of this amount, \$6,281.29 is reimbursement of the Department's costs, and \$6218.71 is to be paid to the Western States Project as a Supplemental Environmental Project.

The remaining \$5,000.00 will be waived in its entirety on condition that Respondent send one or more employees to the California Compliance School (Modules I - IV). Attendance must be completed and the Respondent must submit a Certificate of Satisfactory Completion issued by the California Compliance School to the Department within 90 days of the date of this Consent Order. If Respondent does not provide evidence of such training within 90 days of the effective date of this Consent

Order, Respondent shall pay the additional \$5,000.00 to the Department as a penalty.

If the Respondent fails to submit the certificate as required, the penalty of \$5,000 is due and payable within 30 days after the 90-day period expires. The 90-day period may be extended by a Department Branch Chief upon a written request demonstrating good cause from the Respondent.

Respondent's check for reimbursement of costs shall be made payable to Department of Toxic Substances Control, and Respondent's check for the Supplemental Environmental Project shall be made payable to Western States Project. Respondent's check for cost reimbursement shall be delivered to:

Department of Toxic Substances Control  
Accounting Office  
1001 I Street, 21st floor  
P. O. Box 806  
Sacramento, California 95812-0806

A photocopy of the checks shall be sent:

To:

Yvonne Sanchez,  
Branch Chief  
Southern California Branch  
Statewide Compliance Division  
Department of Toxic Substances Control  
5796 Corporate Avenue  
Cypress, California 90630

To:

Juan Jimenez, Chief  
Border Unit  
Southern California Branch  
Statewide Compliance Division  
Department of Toxic Substances Control  
9174 Sky Park Court, Suite 150  
San Diego, California 92123

Respondent's check for the Supplemental Environmental Project shall be sent to:

Western States Project,  
1275 W. Washington,  
Phoenix, Arizona 85007.

11.1. If Respondent fails to make the payments as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

#### OTHER PROVISIONS

12.1. Additional Enforcement Actions: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

12.2. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

12.3. Parties Bound: This Consent Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.



12.4. Effective Date: The effective date of this Consent Order is the date it is signed by the Department.

12.5. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

Dated: August 9, 2005

Original signed by William E. Huttner

William E. Huttner

President

Brenntag Pacific Incorporated

Dated: August 17, 2005

Original signed by Yvonne Sanchez

Yvonne Sanchez

Branch Chief

Southern California Branch

Statewide Compliance Division

Department of Toxic Substances Control